

**DEPARTMENT OF COMMERCE
GRANTS ADMINISTRATION
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM**



**Subrecipient Agreement
Standard Provisions**

The following CDBG Provisions should be used with all subrecipient agreements where CDBG funds are being used in whole or in part.

STANDARD PROVISIONS

1. **Definitions:** For purposes of this Agreement, the following terms shall have the meanings set forth below:
 - (a) “Agreement” means the agreement between the Grantee and the Subrecipient to which these Subrecipient Agreement Standard Provisions have been incorporated and made a part thereof.
 - (b) “Assistance” means the CDBG grant funds provided, or to be provided, to the Grantee by the State, pursuant to the Grant Award Agreement.
 - (c) “CDBG” means Community Development Block Grant.
 - (d) “Grantee” means each entity designated as the recipient of the Assistance in the Grant Award and signing the acceptance provision of the Grant Award.
 - (e) “HUD” means U.S. Department of Housing and Urban Development, which is the federal agency that awards and has authority over CDBG funding to the State.
 - (f) “Project” means the project for which the services of the Subrecipient have been retained pursuant to the contract to which these Subrecipient Agreement Standard Provisions are incorporated and which are funded, in whole or in part, with CDBG funds.
 - (g) “State” means the State of South Carolina, or that agency, agency division, or Office of State government which has been delegated the responsibility for administering the CDBG program for the State of South Carolina, as appropriate.
 - (h) “Subrecipient” means the subrecipient of the CDBG grant funds as designated by an agreement with the Grantee.
2. **Subrecipient Responsibilities:** The Subrecipient assumes responsibility for the compliance and enforcement of laws and regulations under this Agreement. The Grantee may designate the Subrecipient to be the sole point of contact with regard to contractual matters.
3. **Federal and State Laws:** The Subrecipient agrees to comply with all CDBG requirements as well as other federal and state laws, regulations, or Executive Orders. The State reserves the right to add or delete terms and conditions of this Contract as may be required by revisions and additions or changes in the requirements, regulations, and laws governing the CDBG Program.
4. **Ownership:** Ownership of all real or personal property, acquired in whole or in part with CDBG funds for use on this Project, shall be vested in the Grantee, unless otherwise authorized by the State. When the Grantee determines that the property is no longer required for the purposes of this Project, the Grantee must notify the State and obtain approval for disposition of the property in accordance with applicable guidelines.
5. **Copyright:** Except as otherwise provided in the terms and conditions of this Agreement, the Subrecipient paid through this Agreement is free to copyright any books, publications or other copyrightable materials developed in the course of and under this Agreement. However, the HUD

and the State reserve a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, for Federal government and State purposes:

- (a) the copyright in any work developed under this Agreement; and
- (b) any rights of copyright to which a Subrecipient purchases ownership with grant support.

The Federal government's rights and the State's rights identified above must be conveyed to the publisher and the language of the publisher's release form must insure the preservation of these rights.

6. **Reporting Requirements:** The Subrecipient agrees to complete and submit all reports, in such form and according to such schedule, as may be required by the Grantee, the State or HUD. Failure to meet deadlines with the required information could result in sanctions.
7. **Access to Records:** All records with respect to all matters covered by this Agreement shall be made available for audit and inspection at any time by the Grantee, the State, or HUD or their representatives upon their request.
8. **Maintenance of Records:** Records for non-expendable property purchased totally or partially with Federal funds must be retained for five years after final close-out of the grant. All other pertinent contract records including financial records, supporting documents and statistical records shall be retained for a minimum of five years after the final close-out report. However, if any litigation, claim, or audit is started before the expiration of the five-year period, then records must be retained for five years after the litigation, claim or audit is resolved.
9. **Confidential Information:** Any reports, information, data, etc., given to, prepared by, or assembled by the Subrecipient under this Agreement, which the Grantee or the State requests to be kept confidential, shall not be made available to any individual or organization by the Subrecipient without prior written approval of the State or the Grantee, as applicable.
10. **Reporting of Fraudulent Activity:** If at any time during the term of this Agreement anyone has reason to believe by whatever means that, under this Agreement or any other program administered by the State, a recipient of funds has improperly or fraudulently applied for or received benefits, monies or services pursuant to this Agreement or any other contract, such information shall be immediately reported to the appropriate authorities.
11. **Political Activity:** None of the funds, materials, property or services provided directly or indirectly under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office or otherwise in violation of the provisions of Section 8-13-765 of the Code of Laws of South Carolina, 1976, as amended.
12. **Conflicts of Interest and Ethical Standards, South Carolina Consolidated Procurement Code:** The following provisions regarding "conflicts of interest" apply to the use and expenditure of CDBG funds by the Grantee and its subrecipients.

In the procurement of supplies, equipment, construction and services, the more restrictive conflict of interest provisions of the State of South Carolina Ethics, Government Accountability and Campaign Reform Act of 1991 or of the Subrecipient shall apply.

In cases not governed by the above, such as the acquisition and disposition of real property and the provision of CDBG assistance to individuals, businesses, and other private entities, the following provisions shall apply.

Except for eligible administrative or personnel costs, the general rule is that no person who is an employee, agent, consultant, officer, or elected or appointed official of the State of South Carolina or a unit of general local government or any designated public agencies or subrecipient which are receiving CDBG funds who exercise or have exercised any function or responsibilities with respect to CDBG activities assisted herein or are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter. Exceptions may be granted by the State on a case by case basis as requested upon full disclosure in writing.

Should any governmental entity, recipient, subrecipient, employee or official know or perceive any breach of ethical standards or conflict of interest involving the CDBG funds awarded to the Grantee any other CDBG funds, they shall immediately notify in writing the Department of Commerce, Grants Administration, 1201 Main Street, Suite 1600, Columbia, South Carolina, 29201. If the State finds any circumstances that may give rise to a breach of ethical standards or conflict of interest, under any grant, they shall notify the participating governmental entity and the State Ethics Commission as appropriate. The State may undertake any administrative remedies it deems appropriate, where there is a breach of ethical standards or conflict of interest under the regulations governing the CDBG Program and the State policies.

13. **Applicable Law:** In addition to the applicable Federal laws and regulations, this Agreement is also made under and shall be construed in accordance with the laws of the State. By execution of this Agreement, the Subrecipient agrees to submit to the jurisdiction of the State for all matters arising or to arise hereunder, including but not limited to performance of said Agreement and payment of all licenses and taxes of whatever kind or nature applicable hereto.
14. **Limitation of Liability:** The Subrecipient will not assert in any legal action by claim or defense, or take the position in any administrative or legal procedures that he is an agent or employee of the Grantee.
15. **Legal Services:** No attorney-at-law shall be engaged through the use of any funds provided under this Agreement in any legal action or proceeding against the State, the Grantee, any local public body or any political subdivision.
16. **Agreement:** If any provision in this Agreement shall be held to be invalid or unenforceable, the remaining portions shall remain in effect. In the event such invalid or unenforceable provision is considered an essential element of this Agreement, the parties shall promptly negotiate a replacement provision, which addresses the intent of such provision.

The failure of either party to insist upon strict performance of any terms, conditions and covenants herein set forth shall not be deemed a waiver of any rights or remedies that such party may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

Federal, State and local laws, ordinances and codes are subject to change from time to time as they are promulgated. The Subrecipient shall be notified in writing of any applicable changes when they occur and they shall be incorporated in writing into this Agreement upon concurrence by both parties unless such changes are considered to have an essential impact upon the intent of this Agreement and then they shall be incorporated upon notification to the Subrecipient.

17. **Amendments:** Any changes to this Agreement affecting the scope of work of the Project must be approved, in writing, by the Grantee and the Subrecipient and shall be incorporated in writing into this Agreement. Any amendments exceeding 10% or \$10,000 (whichever is less) of the original contract price must have written approval by the State prior to execution.
18. **Termination for Convenience:** This Agreement may be terminated for convenience in accordance with 24 CFR Part 85.44.
19. **Sanctions:** If the Subrecipient fails or refuses to comply with the provisions set forth herein, then the State or the Grantee may take any or all of the following actions: cancel, terminate or suspend in whole or in part this Agreement, or refrain from extending any further funds to the Subrecipient until such time as the Subrecipient is in full compliance.
20. **Subcontracting:** If any part of the work covered by this Agreement is to be subcontracted, the Subrecipient shall identify the subcontracting entity and the contractual arrangements made therewith to the Grantee and the State. All subcontracts must be approved by the Grantee and the State to insure they are not debarred or suspended by the Federal or State government and to insure the Grantee understands the arrangements. All subcontracts will include terms and conditions to ensure compliance with all applicable CDBG program requirements or other federal or state laws.
21. **Subcontracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Areas:** It is national policy to award a fair share of contracts to disadvantaged business enterprises (DBEs), small business enterprises (SBEs), minority business enterprises (MBEs) and women's business enterprises (WBEs). Accordingly, affirmative steps must be taken to assure that DBEs, SBEs, MBEs and WBEs are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:
 - (a) Including qualified DBEs, SBEs, MBEs and WBEs on solicitation lists;
 - (b) Assuring that DBEs, SBEs, MBEs and WBEs are solicited whenever they are potential sources;
 - (c) Whenever economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by DBEs, SBEs, MBEs and WBEs;
 - (d) Where the requirement permits, establishing delivery schedules which will encourage participation by DBEs, SBEs, MBEs and WBEs;
 - (e) Using the services and assistance of the Small Business Administration, Minority Business Development Agency, the State Office of Small and Minority Business Assistance, the U. S. Department of Commerce and the Community Services Administration as required; and
 - (f) Requiring the subcontractor, if any, to take the affirmative actions outlined in (A) – (E) above.

22. **Debarment Certification:** The Subrecipient must comply with Executive Order 11246 regarding Federal debarment and suspension regulations prior to entering into a financial agreement for any transaction as outlined below.

- (a) Any procurement contract for goods and services, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold (which is \$100,000 and is cumulative amount from all federal funding sources).
- (b) Any procurement contract for goods and services, regardless of amount, under which the Subrecipient will have a critical influence on or substantive control over the transaction.

In addition, no contract may be awarded to any contractors who are ineligible to receive contracts under any applicable regulations of the State.

23. **South Carolina Illegal Immigration Reform Act:** The Subrecipient and any contractors are required to comply with the South Carolina Illegal Immigration Reform Act (signed June 4, 2008) requiring verification of lawful presence in the United States of any alien eighteen years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in U.S.C. Section 1611.

24. **Equal Employment Opportunity:** The Subrecipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the State.

In carrying out the Project, the Subrecipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Subrecipient must take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subrecipient shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State setting forth the provisions of this non-discrimination clause. The Subrecipient shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin. The Subrecipient shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for the Project.

The Subrecipient will, in all solicitations or advertisements for employees by or on behalf of the Subrecipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

The Subrecipient will include the above provisions in every subcontract unless exempted by rules, regulations, or orders of the State issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subrecipient or vendor.

The Subrecipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the State, or pursuant thereto, and will permit access to its books, records, and accounts by HUD and the State for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

In the event of the Subrecipient's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Subrecipient may be declared ineligible for further State contracts or federally assisted construction contract procedures authorized in Executive Order 11246 of September 24, 1965, or by rules, regulations, or orders of the State, or as otherwise provided by law.

25. **Age Discrimination:** In accordance with 45 CFR, Parts 90 and 91, the Subrecipient agrees there shall be no bias or age discrimination as to benefits and participation under this Agreement.
26. **Section 109 of the Housing and Community Development Act of 1974:** No person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part pursuant to this Agreement.
27. **Section 504 of the Rehabilitation Act of 1973:** The Subrecipient agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, in any program or activity that receives the benefits from the Assistance.
28. **Section 3, Compliance and Provision of Training, Employment and Business Opportunities:**
The work to be performed under this Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC § 1701u). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this said Agreement agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediment that would prevent them from complying with the 24 CFR Part 135 regulations.

The Subrecipient agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions; the qualifications for each; and the name and location of person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The Subrecipient agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Subrecipient will not subcontract with any subcontractor where the Subrecipient has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

The Subrecipient will certify that any vacant employment positions including training positions, that are filled (1) after the Subrecipient is selected but before this Agreement has been executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Subrecipient's obligations under 24 CFR Part 135.

The Subrecipient agrees to submit such reports as required to document compliance with 24 CFR Part 135. Noncompliance with the regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

29. **Lead-Based Paint:** The construction or rehabilitation of residential structures with any portion of the Assistance is subject to the HUD Lead-Based Paint regulations found at 24 CFR Part 35. Any grants or loans made by the Subrecipient for the rehabilitation of residential structures with any portion of the Assistance shall be made subject to the provisions for the elimination of lead-based paint hazards under subpart B of said regulations, and the Subrecipient shall be responsible for the inspections and certifications required under Section 35.14(f) thereof.
30. **Compliance with Air and Water Acts:** *(Applicable to construction contracts and related subcontracts exceeding \$100,000)* This Agreement is subject to the requirements of the Clean Air Act, as amended, 42 USC § 7401 et seq., the Federal Water Pollution Control Act (Clean Water Act), as amended, 33 USC § 1251 et seq., the regulations of the Environmental Protection Agency with respect to 40 CFR Part 15, as amended from time to time, and the South Carolina Stormwater Management and Sediment Reduction Act.. In particular, the following are required:
 - (a) A stipulation by the Subrecipient that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities, issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR § 15.20.
 - (b) Agreement by the Subrecipient to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 USC § 7414) and Section 308 of the Federal Water Pollution Control Act, as amended (33 USC § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Sections 114 and 308, and all regulations and guidelines issued thereunder.
 - (c) A stipulation that as a condition of award of contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract under consideration is to be listed on the EPA list of Violating Facilities.
 - (d) Agreement by the Subrecipient that the Subrecipient will include or cause to be included the criteria and requirements in paragraph (A) through (D) of this Agreement, in every nonexempt subcontract and requiring that the subcontractor will take such action as the State may direct as a means of enforcing such provisions.

In no event shall any amount of Assistance be utilized with respect to a facility which has given rise to a conviction under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

31. **Federal Labor Standards Provisions:** The Project to which the work covered by this Agreement pertains is being assisted by the United States of America and the Federal Labor Standards Provisions are applicable to any construction contracts in excess of \$2,000 or residential rehabilitation contracts involving more than eight units entered into by the Subrecipient. The Subrecipient shall include the required federal language covering Davis-Bacon, Copeland Anti Kickback, and Contract Work and Safety Standard Acts in any such contract.